

**Before the State of South Carolina
Department of Insurance**

In the Matter of:)
)
The Proposed Acquisition of Guarantee)
Insurance Company, a South Carolina domestic)
insurer, by Brandywine Insurance Holdings,)
Inc., a Delaware corporation.)
_____)

Docket No. 2003-11

Decision and Order

This matter comes before me pursuant to the Form “A” Statement regarding the Acquisition of Control of or Merger with a Domestic Insurer (“the Form A”) filed by Brandywine Insurance Holdings, Inc. (“the Applicant”), in accordance with South Carolina’s Insurance Holding Company Regulatory Act. See S.C. Code Ann. § 38-21-70 (Supp. 2002) and 25A S.C. Code Ann. Reg. 69-14 (Supp. 2002). South Carolina law requires the approval of the Director of Insurance or his designee, after a public hearing, of any merger or acquisition of control of a South Carolina domestic insurer unless after a public hearing he finds that one of the conditions set forth in S.C. Code Ann. § 38-21-90 (Supp. 2002) exists. The public hearing on the above-referenced acquisition was waived as the conditions set forth in § 38-21-90 do not appear to exist. Accordingly, the above-captioned acquisition is hereby approved subject to the conditions set forth below.

STATEMENT OF THE CASE

The Form A provided notice of the Applicant’s intent to acquire control of Guarantee Insurance Company (“Guarantee”), which has been approved to become a South Carolina domestic insurer. The Applicant proposes to acquire all of the issued and outstanding shares of capital stock of Guarantee held by Guarantee Holdings, Inc., which is the beneficial and record owner of 30,001

shares of common stock of Guarantee, pursuant to a Stock Purchase Agreement for the purchase price of approximately \$9.7 million.

No public hearing was held in this matter. The Department conducted a due diligence review of the proposed transaction. Any issues concerning the Form A application were satisfactorily addressed by the parties.

STATUTORY STANDARD OF REVIEW

S.C. Code Ann. § 38-21-10(2) of the South Carolina Code of Laws creates a presumption of control whenever an acquiring entity would directly or indirectly own ten percent (10%) or more of the voting securities of a regulated entity. S.C. Code Ann. § 38-21-60 prohibits any person from acquiring control of a domestic insurer without first having filed information required pursuant to the Insurance Holding Company Regulatory Act and having obtained approval for that acquisition from the Director of Insurance or his designee under S.C. Code Ann. § 38-21-90.

S.C. Code Ann. § 38-21-90 of the Insurance Holding Regulatory Company Act specifically requires the approval of the proposed acquisition of control of the South Carolina domestic insurer *unless* the Director of Insurance or his designee determines, after a public hearing, that:

- (1) After the change of control the domestic insurer is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (2) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this item:
 - (a) The information requirements and standards of Section 38-21-125(C) and (D) apply.

- (b) The merger or other acquisition must not be approved if the Director or his designee finds that at least one of the situations in Section 38-21-125(D) exists.
- (c) The Director or his designee may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.
- (3) The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.
- (4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to the insurer's policyholders and not in the public interest.
- (5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is not in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.
- (6) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Therefore, the Applicant must prove by a preponderance of the evidence that those factors do not exist.

FINDINGS OF FACT

Having considered the Form A, the findings of the review, and all supplemental materials filed in this matter, I find, by a preponderance of the evidence, the following as to the requested approval of the acquisition of Guarantee.

1. A Form "A" application was filed with the Department, on or about, July 28, 2003.

2. Guarantee has been approved to be a South Carolina domestic insurer and is currently wholly owned by Guarantee Holdings, Inc., a Delaware corporation.

3. Approval of Guarantee's redomestication was granted on September 5, 2003.
(See Exhibit A)

4. The Applicant proposes to acquire, directly or indirectly, all of the issued and outstanding stock of Guarantee for an aggregate purchase price of approximately \$ 9.7 million in cash and notes. This represents the total consideration to be paid by the Applicant pursuant to the terms of the Stock Purchase Agreement.

5. Guarantee will continue its operations in South Carolina. It has been in run-off and has not voluntarily written or assumed any new or renewal business since 1987.

6. Based upon the materials submitted by the Applicant, none of the conditions provided for under S.C. Code Ann. § 38-21-90(A) existed or applied with respect to the proposed acquisition.

7. The Applicant represented that Guarantee would continue to comply with all requirements for licensure. Guarantee will relocate its offices and operations to South Carolina and expand the multi-state licenses it holds to include workers' compensation. There is no present plan to write any line of business other than workers' compensation.

8. The Applicant asserts in the Form A that it has no present plans to liquidate Guarantee or to sell its assets to any person. The Form A also states that the Applicant does not have any plans to cause Guarantee to merge or consolidate or transfer any of its assets with any other company. The officers of Guarantee will be Lucia A. Tompkins, President and Chief Executive Officer, Lisa L. Hirsch, Executive Vice President and Secretary, and Stephen B. Cook, Executive Vice President and Treasurer. The directors of Guarantee will be Stephen B. Cook, John R. Del Pizzo, Robert M. Fotsch, Steven M. Mariano and Lucia A. Tompkins. Guarantee will operate as a South Carolina domestic insurer.

9. The biographical affidavits provided for the executive officers and directors of the Applicant were included in the Form A. That information indicates that the Applicant's proposed management team has management experience in insurance company operations and further indicates that those individuals do not have a history of criminal convictions.

10. Guarantee reports an \$8,000,000 surplus position as of June 30, 2003. This is an unaudited figure. Accordingly, this company's operations will be monitored closely.

CONCLUSIONS OF LAW

I have considered the statutory requirements for approval of a change of control in accordance with the applicable provisions of the South Carolina Code and make the following conclusions of law:

1. Upon completion of the proposed acquisition, Guarantee will continue to be able to satisfy the requirements for the issuance of a license for which it is presently licensed as required by § 38-21-90 (A)(1).
2. This acquisition does not appear to substantially lessen competition or create a monopoly, which is prohibited by § 38-21-90 (A)(2).

3. The Applicant's financial condition will not jeopardize the financial stability of Guarantee or prejudice the interest of its policyholders pursuant to the provisions of § 38-21-90 (A)(3).
4. The transaction is neither unreasonable for policyholders nor contrary to the public interest pursuant to the provisions of § 38-21-90(A)(4).
5. The Form A indicates that the Applicant will bring some insurance and management experience to the transaction. It also appears that the conditions of § 38-21-90(A)(5) would not occur.
6. The proposed acquisition is not likely to be hazardous to those buying insurance as prohibited by § 38-21-90(A)(6). Any existing certificates of coverage will continue in force and effect.

CONCLUSION

In view of the foregoing findings of fact and conclusions of law, the criteria established under S.C. Code Ann. § 38-21-90 (Supp. 2002) for approval of an acquisition of control or merger of a domestic insurer have been met. Accordingly, it is ordered that the Form A application to acquire direct control of Guarantee is APPROVED subject to the following conditions. The Applicant must:

1. Cause the filing of Guarantee's Certificate of Redomestication with the South Carolina Secretary of State;
2. Secure the approval of any other regulatory entities by making any required state and federal filings; and,
3. Comply with all applicable provisions of South Carolina law to maintain the domestic licensure of Guarantee, including maintaining its original books and records within the State of South Carolina.

And it is so ordered.

A handwritten signature in black ink, appearing to read "E. N. Csiszar", with a long horizontal flourish extending to the right.

Ernst N. Csiszar
Director

Columbia, South Carolina
September 5, 2003